

SEP 11 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PABLO MADERA-GOMEZ,

Defendant - Appellant.

No. 06-50255

D.C. No. CR-05-01820-DMS

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
Dana M. Sabraw, District Judge, Presiding

Submitted September 8, 2008<sup>\*\*</sup>

Before: TASHIMA, SILVERMAN, and N.R. SMITH, Circuit Judges.

Pablo Madera-Gomez appeals from the 120-month sentence imposed following his guilty-plea conviction for importing methamphetamine, in violation of 21 U.S.C. §§ 952 and 960. We dismiss the appeal.

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The government contends that this appeal should be dismissed pursuant to the appeal waiver in Madera-Gomez's plea agreement. Application of the appeal waiver is contingent on Madera-Gomez's safety-valve eligibility. We conclude that the district court properly found Madera-Gomez ineligible for safety valve relief. *See* U.S.S.G. § 4A1.2(c)(1)(A); *see also United States v. Ajugwo*, 82 F.3d 925, 929-30 (9th Cir. 1996) (affirming because the appellant failed to show that she met each of the five safety valve criteria). Therefore, the appeal waiver applies.

Madera-Gomez contends that the appeal waiver is unenforceable because his guilty plea was not knowingly and voluntarily entered into due to ineffective assistance of counsel. Because the record is insufficiently developed, we decline to consider this claim on direct appeal. *See United States v. Jeronimo*, 398 F.3d 1149, 1155-56 (9th Cir. 2005).

Accordingly, we dismiss in light of the valid appeal waiver. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000).

**DISMISSED.**